

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RAPHAEL M. PANTOJA, :  
RACHEL M. PANTOJA, and :  
RAFAEL M. PANTOJA : 18 Civ. 11842 (PAE) (GWG)  
:  
PlaintiffS, : ORDER  
-v- :  
:  
JAVIER ENCISO & HERMAN QUAY, :  
:  
Defendants. :  
:  
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PAUL A. ENGELMAYER, District Judge:

On December 17, 2018, *pro se* plaintiffs Raphael M. Pantoja, Rachel M. Pantoja, and Rafael M. Pantoja brought this action asserting claims arising out of Rafael's incarceration at the Metropolitan Detention Center, Brooklyn, and Rachel's interactions with defendant probation officer Javier Enciso. On December 10, 2019, the Honorable Gabriel W. Gorenstein, United States Magistrate Judge, issued a thorough and well-reasoned Report and Recommendation, recommending that the Court grant defendants' then-pending motion to dismiss or, in the alternative, for summary judgment. Dkt. 60 ("Report"). The Report explicitly stated that "failure to object within fourteen (14) days will result in a waiver of objections and will preclude appellate review." Report at 16. On January 6, 2020, well after the deadline for objections, the Court, adopted the Report, granted defendants' motion and closed this case. Dkt. 61 ("Op."). The Court explained that the parties' failure to object constituted a waiver of objections and of appellate review. *Id.* at 2 (citing *Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008)). On January 9, 2020, the Court received a letter from plaintiffs, dated January 6, 2020, objecting to the Report. Dkt. 63. On January 23, 2020, defendants responded. Dkt. 64.

Plaintiffs waived any objections by failing to file such within the deadline imposed by the Court. Accordingly, the Court need not address the objections on the merits. *See* Op. at 2 (citing *Caidor*, 517 F.3d at 604). However, for the avoidance of doubt, plaintiffs' objections, if timely filed, would have had no impact on the Court's analysis. Plaintiffs raised four objections, each of which either presented entirely new evidence or repeated an made before Judge Gorenstein. "Courts generally do not consider new evidence raised in objections to a magistrate judge's report and recommendation." *Tavares v. City of New York*, No. 08 Civ. 3782 (PAE), 2011 WL 5877548, at \*2 (S.D.N.Y. Nov. 23, 2011) (citation omitted). And, to the extent the objecting party simply reiterates the original arguments, courts will review a report and recommendation strictly for clear error. *See Dickerson v. Conway*, No. 08 Civ. 8024 (PAE), 2013 WL 3199094, at \*1 (S.D.N.Y. June 25, 2013); *Kozlowski v. Hulihan*, Nos. 09 Civ. 7583, 10 Civ. 0812 (RJH), 2012 WL 383667, at \*3 (S.D.N.Y. Feb. 7, 2012). Before adopting the Report, the Court carefully reviewed it for clear error, finding none. Op. at 2. Plaintiffs' untimely objections would not have changed the relevant standard of review or introduced any hint of clear error. Accordingly, the Court reaffirms its January 6, 2020 opinion, and this case remains closed.

The parties' failure to file objections during the prescribed period operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)). The Clerk of Court is respectfully directed to mail a copy of this order to plaintiffs.

SO ORDERED.

  
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Paul A. Engelmayer  
United States District Judge

Dated: January 23, 2020  
New York, New York